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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,502	09/11/2000	Monica R. Nassif	497.001US1	4893

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Mark A Litman & Associates P A
York Business Center
Suite 205
3209 West 76th Street
Edina, MN 55435

EXAMINER	
WELLS, LAUREN Q	
ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 07/29/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	09/659,502	NASSIF ET AL.	
	Examiner	Art Unit	
	Lauren Q Wells	1617	

-- The MAILING DATE of this communication appears on the c ver sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 May 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24 and 26-28* is/are pending in the application.

4a) Of the above claim(s) *22-24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21 and 26-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Claims 1-21 and 26-28 are pending. Claims 22-24 are withdrawn from consideration, as they are directed toward non-elected subject matter. The Amendment filed 3/24/03, Paper No. 13, amended claims 1, 9-13, 22, cancelled claims 25, and added claims 27-28.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/8/03 has been entered.

Priority

In the instant declaration, Applicant is claiming priority to Provisional Application 60/152,210. However, Provisional Application 60/152,210 does not disclose the subject matter of the instant invention. Instead, Provisional Application '210 is directed toward Planetary Pitched Member Transmissions. Thus, Applicant is not given the priority date of this Provisional Application. Thus, the effective filing date of this Application is 9/11/00.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-21, 26-28, drawn to a method for providing aromatherapy and compositions thereof, classified in class 512, subclass 1.

II. Claims 22-24, drawn to a kit, classified in class 510, subclass 406.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the inventions are distinct. A method of providing aromatherapy to a person comprising applying a composition with an essential oil to a household function is completely distinct from a kit, whose function is to hold something. The method can be practiced without ever using a multi-compartment kit.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mark Litman on 6/23/03 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-21, 26-28. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-21, 26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(i) Claims 1 and 27 are vague and indefinite, as they are confusing. How can the composition consist of a liquid composition in line 2, wherein the liquid composition "comprises" in line 5, wherein the solvents in the liquid composition consist essential of water or alcohol in lines 9-10?

(ii) The terms "moisturizing", "dish soaps" and "ironing liquids" in claim 1 (lines 4-5), 26 (line 4) are vague and indefinite, as they are confusing. How are dish soaps and ironing liquids household functions? Are they not products to effect a household function? The Examiner respectfully suggest that Applicant amend these terms to washing dishes and ironing, if there is such support in the specification. How is moisturizing a household function? What inanimate surface in the home is moisturized?

(iii) The term "finishing" in claims 21 (line 4) (line 6) is vague and indefinite, as it is confusing. Finishing what? Finishing furniture? To what household function does finishing refer?

(iv) The term "moisturizing" in claim 27 (line 4) is vague and indefinite, as it is confusing. How is moisturizing a household function? What inanimate surface in the home is moisturized?

(v) The term "foreign matter removal" in claims 1 (line 4), 26 (line 4) and 27 (line 4) is vague and indefinite, as the metes and bounds of these claims are unascertainable. What is

encompassed as "foreign matter"? It is not clear what this term means and how it relates to a household function.

(vii) Claim 12 is vague and indefinite, as it is confusing. Claim 12 is dependent on claim 9, but does not further limit claim 9.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-2, 4-21, 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Cheung et al. (6,177,388).

Cheung et al. disclose an aqueous concentrated liquid composition for cleaning hard surfaces which blooms when added to a larger volume of water, which comprises botanical oil constituents and a binary solvent system which includes at least one organic alcohol and glycol.

Peppermint oil, lavender oil, bergamot oil, rosemary oil, and sweet orange oil are disclosed as botanical oils. Isopropyl alcohol is disclosed as an organic alcohol. Larger volumes of water can be added to the composition. See Cols. 14-16, claims 1, 2, 8 and 17. Table 1 of Col. 12 exemplifies a composition comprising 4% peppermint oil, 12% isopropyl alcohol (additional component to effect a household function), water (additional component to effect a household function), and other ingredients. Thus, Cheung et al. and the instant invention teach a method of applying a composition to an inanimate surface for household cleaning purposes, comprising 4% of an aromatherapeutic essential oil, and solvents selected from water or alcohol. It is respectfully pointed out that applying the composition to the surface results in providing aromatherapy to persons within the ambient environment. It is respectfully pointed out, regarding the recitation "allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy", that this limitation is met because the moment an essential oil is released from a container, the aroma begins to circulate within an area, thereby providing aromatherapy. Cheung et al. and the instant invention also teach a composition comprising at least 0.2% of an antibacterial oil and a separate ingredient for effecting a household function.

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Elliott (5,620,695).

Elliott exemplifies a composition comprising 96% carrier oil, 2% lavender (an antiseptic, an antiseptic which can effect a household function), 1% eucalyptus (antibacterial essential oil), 1% ti tree. See Col. 2, lines 31-39. Thus, Elliott and the instant invention both teach a composition comprising at least 0.2% of an antibacterial essential oil (eucalyptus) and an ingredient that effects a household function (lavender).

The Examiner respectfully points out that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Thus, the intended use of the instant composition claim is not given patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cheung et al. as applied to claims 1-21 and 26-28 above.

The instant invention is directed toward a method for providing aromatherapy to persons or animals within an ambient environment comprising directly applying a composition consisting of a liquid composition to an inanimate surface to effect a household function selected from surface cleaning, surface shining, degreasing, cleansing, foreign matter removal, moisturizing, dish soaps, and iron liquids, the liquid composition comprising an aromatherapeutic concentration of an aromatherapeutic essential oil of 0.1-20%, completing the household function, allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment, the solvents in

said liquid composition consisting essential of materials selected from water and alcohols; a composition comprising a liquid composition comprising 0.2% of an antibacterial essential oil and a separate ingredient that effects a household function.

Cheung et al. is applied as discussed above. The reference further teaches that the concentrate composition are particularly useful in the cleaning of surfaces composed of ceramics, glass, and metals. See Col. 11, line 64-Col. 12, line 17. The reference lacks an exemplification of cleaning these specific surfaces.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to exemplify a method of cleaning ceramic, glass or metal using the composition exemplified by Cheung et al. because Cheung et al. teach their compositions as particularly useful for cleaning ceramic, glass, and metal.

Claims 1-2, 4-20, 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al. (6,045,813).

Ferguson et al. teach lotions and gels with active ingredients in beads. Exemplified is a method of treating a surface with an active ingredient comprising providing a carrier liquid, disbursing in the carrier liquid a multiplicity of visible friable beads, each containing from about 0.5 to about 5% by weight active ingredient for treating the surface, dispensing the carrier with beads through a dispenser pump onto a surface; and using the carrier with beads on the surface, at least one of the steps of dispensing or the step of using the beads on the surface, causing fracturing of the beads to spill their contents and mix it with the carrier liquid. An essential fragrance oil is taught as the active ingredient. The composition is taught for use as a household cleanser. Alcohol and water are taught as carriers. Essential oils are taught as comprising 0.5-

3% of the composition and chamomile extract is taught as an essential oil. Thus, both Applicant and Ferguson et al. disclose liquid cleaning compositions that are applied to hard surfaces, wherein the composition comprises aromatherapeutic essential oils and wherein aromatherapy is provided to persons within the ambient environment of the cleaned hard surface. The reference lacks an exemplification of effecting a household function. See Col. 1, line 5-Col. 2, line 65; Col. 8, line 57-Col. 12, line 64.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Ferguson et al. to exemplify a method of treating a surface for household cleansing with an 0.5-5% of an essential oil and carrier because Ferguson et al. specifically teach their method for household cleaning and because of the expectation of achieving a cleansing product that smells good.

Regarding the limitation "allowing the aromatherapeutic essential oil to remain within the ambient environment to effect aromatherapy on persons or animals within the ambient environment", it is respectfully pointed out that this limitations is met because Ferguson et al. teach their methods as imparting fragrance upon cleaning.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson et al. as applied to claims 1-2, 4-20, 26-28 above, and further in view of Durbut et al. (6,022,839).

Ferguson et al. is applied as discussed above. The reference lacks preferred household functions.

Durbut et al. teach all purpose liquid cleaning compositions comprising essential oils. The compositions are taught for cleaning hard surfaces such as painted woodwork, tiled walls, tile floors, bathtubs, and metal surfaces. See Col. 1, lines 10-67; Col. 5, line 27-Col. 6, line 9.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to teach the household functions of Durbut et al., such as cleaning woodwork, tile, and metal surfaces, in the invention of Ferguson et al. because Ferguson et al. broadly teach their compositions for cleaning household surfaces and because of the expectation of achieving a product that can be formulated for multiple household tasks, thereby increasing the efficiency by which one cleans.

Response to Arguments

Applicant argues, "There is no direct application of the liquid composition to the surface". This argument is not persuasive. See Claim 19 of Ferguson, which teaches a method of treating a surface with an active ingredient, wherein the active ingredient is an essential oil with beads, wherein the beads fracture in contact with the surface.

Applicant argues, "Direct means exactly that—application of the material directly, without intermediate steps (such as rupturing shells and using shells as an abrasive) to a surface". This argument is not persuasive. The Examiner respectfully points out that during patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' See MPEP 2111. In the instant case, the method of Ferguson results in the direct contact of essential oil with a surface. Furthermore, the Examiner respectfully directs Applicant to col. 4, lines 28-36, which teaches that the beads can be fractured, spilling out the essential oil, even before the composition reaches the surface.

Applicant argues, "Additionally, the incidental disclosure of Ferguson of materials that happen to be aromatherapeutic ingredients (e.g., the 0.1% fill composition of Chamomile extract in Table 7) shows the use of this component below the levels recited in the claims". This argument is not

persuasive. it is well-established that consideration of a reference is not limited to the preferred embodiments or working examples, but extends to the entire disclosure for what it fairly teaches, when viewed in light of the admitted knowledge in the art, to person of ordinary skill in the art. In re Boe, 355 F.2d 961, 148 USPQ 507, 510 (CCPA 1966); In re Lamberti, 545 F.2d 747, 750, 192 USPQ 279, 280 (CCPA 1976); In re Fracalossi, 681 F.2d 792, 794, 215 USPQ 569, 570 (CCPA 1982); In re Kaslow, 707 F.2d 1366, 1374, 217 USPQ 1089, 1095 (Fed. Cir. 1983). The Examiner respectfully points out that while the reference exemplifies a composition comprising 0.1% chamomile, the reference teaches in the claims that the essential fragrance oil can comprise 0.5-5% of the composition.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-5:30), with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (703)305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw
June 24, 2003

SREENI PADMANABHAN
PRIMARY EXAMINER

6/27/03